

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CHARLTON DEPRIEST, ET AL.

PLAINTIFFS

v.

**MARSHALL L. FISHER, in his official capacity
as Commissioner of the Mississippi Department of Corrections**

Civil Action No. 3:10-cv-00663(CWR)(FKB)

DEFENDANT

**MOTION TO DISMISS WITHOUT PREJUDICE OR STAY CONSIDERATION OF
ATTORNEYS' FEES PENDING APPEAL, OR, IN THE ALTERNATIVE, MOTION
FOR EXTENSION OF TIME TO FILE RESPONSE**

The Defendant, Marshall Fisher, in his official capacity as the Commissioner of the Mississippi Department of Corrections¹ (“Defendant”), by and through undersigned counsel, files this motion to dismiss without prejudice or to stay consideration of attorneys’ fees pending appeal. In the alternative, Defendant requests an extension of time to file a response to Plaintiffs’ motion for fees. In support of this motion, Defendant would show unto the Court the following:

1. On June 11, 2015, this Court entered an order addressing Plaintiffs’ motion to modify the Consent Decree and Defendant’s motion to terminate the Decree. Plaintiffs’ motion to modify was denied in its entirety, and the Court terminated many provisions of the Consent Decree. *See Amended Order, p. 30, Docket Entry No. [170]* (“[T]he Court finds that a majority of the Consent Decree’s provisions are no longer necessary”). Per its Order, however, the Court determined that it would “continue” to enforce the following two substantive provisions of the Decree: (i) classification and housing system, and (ii) protection from harm.² *See id.*

2. Thereafter, on June 25, 2015, Plaintiffs’ filed a motion for attorneys’ fees. *See Motion, Docket Entry No. [171].*

¹ Under Federal Rule of Civil Procedure 25, the Defendant now should be Marshall L. Fisher, in his official capacity as the Commissioner of the Mississippi Department of Corrections.

² The third remaining provision of the Decree is enforcement and monitoring.

3. Simultaneously with the filing of the instant motion to dismiss and/or stay, Defendant is filing a notice of appeal to the Fifth Circuit Court of Appeals. Defendant is appealing to the Fifth Circuit the Court's decision to deny, in part, Defendant's termination motion.

4. Due to this, Defendant respectfully requests that the Court defer consideration of the issue of awarding attorneys' fees until after the Fifth Circuit has rendered its decision on Defendant's appeal. Pursuant to the committee notes for Federal Rule of Civil Procedure 54(d)(2), the district court may "defer its ruling on the motion [for attorneys' fees], or may deny the motion without prejudice, directing . . . a new period for filing after the appeal has been resolved."

5. Staying the fees motion until after the appeal is exhausted will avoid piecemeal litigation and will allow for the resolution of all issues regarding attorneys' fees at a single time.

6. Accordingly, Defendant respectfully requests that the Court exercise its discretion and defer ruling on the Plaintiffs' motion for attorneys' fees until after the resolution of the appeal. Plaintiffs' fees motion thus should be dismissed without prejudice or stayed.

7. In the alternative, Defendant respectfully requests that the Court allow it an additional fourteen (14) days from the date the Court denies the instant motion within which to respond to Plaintiffs' motion for attorneys' fees.

8. In support of this Motion, Defendant relies on its Memorandum in support of this Motion.

Dated: July 8, 2015.

Respectfully submitted,

**MARSHALL FISHER, IN HIS OFFICIAL
CAPACITY AS THE COMMISSIONER OF THE
MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**BY: JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

/s/ Gary E. Friedman

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I, GARY E. FRIEDMAN, do hereby certify that on July 8, 2015, I electronically filed the above and foregoing *MOTION TO DISMISS WITHOUT PREJUDICE OR STAY CONSIDERATION OF ATTORNEYS' FEES PENDING APPEAL, OR, IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE RESPONSE* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel of record:

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